circumstances. It was the foreman's own negligence in failing to replace it in this instance without giving warning, and was one of the ordinary risks the plaintiff had assumed.

MASTER AND SERVANT—INJURY TO SERVANT—VICE PRINCIPAL.—Brinkman was a stationary engineer in the car shops of defendant (below), working under the immediate direction of Hiscox, the chief engineer. Hiscox called him from his regular duties to another part of the works to assist him in testing a new electric motor by the explosion of which Brinkman was injured. Brinkman had no knowledge of electric motors, while Hiscox was familiar with them and knew or had reason to know the particular defect that led to the injury. *Held,* defendant was liable. The rule of fellow servants did not apply, and Brinkman had not assumed the risk. *American Car & Foundry Co.* v. *Brinkman* (1906), — C. C. A. 7th Circ. —, 146 Fed. Rep. 712.

A servant by entering and remaining in an employment assumes the risks incident thereto, of which he has actual or constructive knowledge. But if he is called temporarily from his regular duties to perform an unfamiliar task he assumes those risks only of which he has actual knowledge. *Lalor* v. *Chicago B. & Q. Ry. Co.,* 52 Ill. 401; *Brown* v. *Ann Arbor Ry. Co.,* 118 Mich. 205; *Chicago Ry. Co.* v. *Bayfield,* 37 Mich. 205. This was the situation of Brinkman in the present case. One of the positive duties of a master is to provide a reasonably safe place of employment and machinery free from defects which are discoverable by reasonable inspection. *Spicer* v. *S. Boston etc. Co.,* 138 Mass. 426; *Keegan* v. *W. Ry. Co.,* 8 N. Y. 175; *Hayes* v. *Smith,* 28 Vt. 59. A master cannot delegate a positive duty and thus escape responsibility for its performance. *Corcoran* v. *Holbrook,* 59 N. Y. 517; *Wheeler* v. *Wason Mnfg. Co.,* 135 Mass. 294; *Lafayette Bridge Co.* v. *Olsen,* 108 Fed. 335. In the principal case, therefore, as respects this particular transaction, Hiscox was a vice principal, and it is immaterial whether or not he and Brinkman were fellow servants.

MUNICIPAL CORPORATIONS—LIABILITY FOR TORT—OPERATION OF DRAWBRIDGES.—While crossing a bridge, the duty of the establishment and operation of which had been imposed upon the defendant city by statute, the plaintiff was injured by the negligent raising of the draw. In an action to recover for the injury the city was *held* liable. *Naumburg* v. *City of Milwaukee* (1906), — C. C. A. 7th Circ. —, 146 Fed. Rep. 641.

Bridges are considered as public highways, and as to the liability of the municipality for their negligent construction and operation the same rules in general apply as in the case of highways proper. ABBOTT, MUNIC. CORP., § 1024 *et seq.* As to the liability of the public corporation for negligent construction and operation of drawbridges, so far as it applies to those injured thereby while navigating the river, the cases seem in hopeless conflict. Liability was denied in the following cases: *Corning* v. *Saginaw,* 116 Mich. 74, 74 N. W. 307, 40 L. R. A. 526; *Godfrey* v. *Kings County,* 89 Hun. 18, 34 N. Y. Supp. 1052; *French* v. *Boston,* 129 Mass. 592, 37 Am. Rep. 393; *McDougall* v. *Salem,* 110 Mass. 21. On the other hand, in the following cases the muni-

cipality was held liable: *Scott* v. *Chicago,* 1 Biss. 510, Fed. Cas. No. 12,526; *Boston* v. *Crowley,* 38 Fed. 202; *Van Etten* v. *Westport,* 60 Fed. 579; *Greenwood* v. *Westport,* 60 Fed. 560, reported also in 62 Conn. 575: *Houston* v. *Police Jury,* 3 La. Ann. 566; *Ripley* v. *Board of Freeholders,* 40 N. J. L. 45; *Weisenberg* v. *Town of Winneconne,* 56 Wis. 667, 14 N. W. 871. The three cases from the federal reporters, however, were in Admiralty, and as stated in *Daly* v. *New Haven,* 69 Conn. 644, 38 Atl. 397, were governed by the peculiarities of the maritime law; but the other cases are irreconcilable. As to their liability to those using the bridge as a highway for injuries received by the operation of the draw, the cases seem scarce. The courts make a distinction between injuries received by the negligent operation of the draw and those received by the negligent construction and maintenance of the bridge as a highway. As to the latter the general rule as to highways is applied, and, according to the weight of authority, numerically at least, the municipality would be held liable even in the absence of statute making them so; but as to the former the current of authority would seem to be that there is no liability. In *Daly* v. *New Haven,* supra, an action for the death of plaintiff's intestate while crossing the bridge, caused by negligently allowing the machinery for operating the draw to be in an unsafe condition, the court held the city not liable, and stated that the duty to keep the bridge in proper repair for public travel is quite distinct from the duty to provide and properly operate a draw. As to the first duty it is a public highway, while as to the latter it is as an aid to navigation, and it has ceased to be a part of the highway. To the same effect is *Butterfield* v. *Boston,* 148 Mass. 544, 20 N. E. 113, 2 L. R. A. 447. In the principal case the court practically relied upon *Weisenberg* v. *Winneconne,* supra, but in that case, which was an action for causing the death of the plaintiff's intestate by the negligent operation of the draw while deceased was navigating the river, the court, while holding the town liable, said: "The only highway in question in this case is the navigable river, *and the liability of towns in respect to roads and bridges is not involved,* for the deceased was not seeking the use of the bridge for the purpose of travel, and it is complained of only as an obstruction to the navigation of the river as a common highway, which he had a right to use and navigate without unnecessary obstruction." In *Stephani* v. *Manitowoc,* 89 Wis. 467, 62 N. W. 176, also relied upon, the traveler was drowned by walking into the river at night when the draw was open, the city having negligently failed to provide lights or other proper safeguards, and the city was held liable, the decision being based on the statute making municipalities liable for injuries received by defective construction or maintenance of highways. It can be distinguished from the principal case upon the same grounds stated in *Daly* v. *New Haven,* for the negligence was not in operation of the draw, but in keeping the highway as a highway in a safe condition. There would have been strong support in reason and authority for a conclusion that the operation of the draw was a public governmental duty, and that, therefore, the city was not liable. As to what are public governmental duties as distinguished from private or corporate duties, see 5 MICH. LAW REV. 136.